IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16390 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHBHAI HARIBHAI WAGHELA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 16390 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR LR PUJARI Ld. AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 29/01/2004

ORAL JUDGEMENT

1. Heard Ms.D.R.Kachhavah, learned advocate for the petitioner and Mr. L.R.Pujari, learned AGP for the

respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioner has been challenging the detention order dated 20.2.2003 (Annexure-A) passed by the respondent no.1 and prays for quashing and setting aside of the said order.

3. The petitioner was served with the detention order (Annexure-A) on the same day i.e. on 20.2.2003 and taken in the detention. As per the detention order 3 cases under Section 379 and 114 of IPC have been registered against the petitioner, last being on 20.10.2002. Thereafter witnesses of unregistered cases have also been incorporated in the detention order.

4. On behalf of the petitioner reliance has been placed on the decision in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Others, 2000 (1) GLR 116. While dealing with Section 3 of the Gujarat Prevention of Anti-Social Activities Act,1985, the Division Bench held that "four cases registered against the detenu under IPC, looking to the incident the cases fall under the maintenance of "Law and Order" and not "Public Order" and therefore, the subjective satisfaction arrived by the Detaining Authority cannot be said to be legal or valid and the order of detention could have been passed on maintenance of "Public Order", detention order quashed".

5. In the instant case, the statements of two witnesses suppressing the identity in the unregistered cases also suggest that the incident alleged were that of theft of motor vehicles viz. motor-cycle. The statement of second witness suggests that on 27.12.2002 an attempt was made to commit theft of Hero-Honda Motor Cycle and in the incident, the petitioner is alleged to have taken out knife and threatened the persons who had gathered together. These registered cases as well as in the statement of witnesses and the unregistered cases relate to the theft of motor vehicles.

6. In my opinion, the present case is squarely covered by the decision in the case of Ashokbhai Jivraj Jivabhai Solanki (Supra) and the Detaining Authority could not have passed the order as the incident alleged would fall under the maintenance of "Law and Order" and not the "Public Order".

7. In view of the above, the impugned detention order (Annexure-A) is liable to be quashed and set

aside.

8. In the result, the petition is granted. The impugned order of detention dated 20.2.2003 (Annexure-A) passed by respondent no.1 against the petitioner detenu is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)